IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16538 of 2005
With
SPECIAL CIVIL APPLICATION No. 18868 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHETANKUMAR KANTILAL PATEL & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS TRUSHA K PATEL for Petitioner(s) : 1 - 4.
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2005

ORAL JUDGMENT

1. Rule. Shri M.R.Mengade, learned AGP waives

service of rule on behalf of the respondent – State Authorities. With the consent of the learned advocates for the parties, both these matters are heard finally today and as both these petitions are with regard to the same land in question and the facts are common, they are being disposed of by this common judgment and order.

2. So far as Special Civil Application No.16538 of 2005 is concerned, the petitioners have challenged the legality and validity of the order passed by the Joint Secretary, Revenue Department (Appeals), State of Gujarat dated 16.7.2005 passed in suo motu Revision Application No.1 of 2004 in quashing and setting aside the Non Agriculture Use Permission (hereinafter referred to as the “N.A.Permission” for short) granted by the Taluka Development Officer, Danta dated 29.7.2003.

3. So far as Special Civil Application No.18868 of 2005 is concerned, the respective petitioners have challenged the judgment and order passed by the Joint

Secretary, Revenue Department (Appeals), State of Gujarat dated 16.7.2005 passed in Revision Application No.21 of 2004 in dismissing the same and confirming the order passed by the Collector, Banaskantha dated 25.1.2004 in quashing and setting aside the Entry No.1168 with respect to the land bearing Survey No.150 admeasuring 4 Acres of land situated at village Kumbhariya, Taluka Danta, District Banaskantha.

4. The dispute is with regard to the land bearing Survey No.150 admeasuring 4 acres situated at village Kumbhariya, Taluka Danta, District Banaskantha and the same was originally owned by one Parmar Nana Saja and the said land was sold by him on 4.12.1970 to one Bhabutaji Lakhwara and necessary entry was also made in the revenue record with regard to the said sale transaction. It appears that after some litigation, the Mamlatdar and ALT initiated the proceedings and/or inquiry under Section-84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the “the Act” for short) by

registering Tenancy Case No.843 of 1987 and the Mamlatdar and ALT passed the order on 30.4.1988 under Section-84-C of the Bombay Tenancy Act forfeiting the land to the State Government. It appears that the said purchaser i.e the persons who have purchased the land in question and original owner i.e. Parmar Nana Saja challenged the order passed by the Mamlatdar and ALT dated 30.4.1988 before the Deputy Collector, Palanpur by way of Tenancy Appeal No.16 of 1996 after period of almost eight years. However, the Assistant Collector, Palanpur by its order dated 7.12.1999 allowed the said Tenancy Appeal No.16 of 1996 by quashing and setting aside the order passed by the Mamlatdar and ALT, Danta dated 30.4.1988 passed in Tenancy Case No.3 of 1987 by which the land was forfeited to the State Government under Section-84-C of the Bombay Tenancy Act. It appears from the record that thereafter the petitioners purchased the said land in question by registered sale deed dated 19.3.2001 and the names of the petitioners came to be mutated in the revenue record vide Entry No.1168 on 21.5.2002. It also appears from the record that being

aggrieved and dissatisfied with the order passed by the Deputy Collector / Assistant Collector, Palanpur dated 7.12.1999 passed in Tenancy Appeal No.16 of 1996, the State Government preferred Revision Application No.TEN.BA No.85 of 2002 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal granted the order of status quo. It appears from the record that in the mean time and before final disposal of Revision Application No.85 of 2002 by the Gujarat Revenue Tribunal, the petitioners applied for NA Permission to the Taluka Development Officer, Danta and the TDO, Danta by its order dated 29.7.2003 granted NA Permission with respect to the land in question. However, in the mean time, the Collector, Banaskantha took the said Entry No.1168 into suo motu revision i.e entry by which the names of the petitioners came to be mutated in the revenue records pursuant to the registered sale deed dated 19.3.2001, by its order dated 25.1.2004 set aside the aforesaid Entry No.1168 on the ground that though it is new tenure land but in the revenue record, there is no mention with regard to converting the said land

into old tenure land and therefore, the sale deed was executed by submitting wrong facts. Being aggrieved and dissatisfied with the order passed by the Collector, Banaskantha dated 9.7.2004 passed in Revision Application No.7 of 2004 in setting aside the aforesaid entry No.1168, the petitioner preferred the Revision Application No.21/2004 before the Joint Secretary (Appeals), Revenue Department, State of Gujarat. Simultaneously, Secretary, Revenue Department (Appeals), has also taken the orders passed by the TDO dated 29.7.2003 granting N.A. Permission in favour of the petitioners with respect to the lands in question under suo-motu revision being suo-motu revision No.1/2004 and both the aforesaid Revision Applications came to be heard together. The Joint Secretary, Revenue Department (Appeals), State of Gujarat by its common judgment and order dated 16.7.2005 dismissed Revision Application No. 21/2004 and allowed suo-motu revision No.1/2004 by confirming the order passed by the Collector, Banaskantha in canceling entry No.1168 and quashing and setting aside the order passed by the

TDO, Danta dated 29.7.2003 in granting N.A.Permission with regard to the land in question. Being aggrieved and dissatisfied with the aforesaid common judgment and order, the petitioners have preferred Special Civil Application 16538 of 2005 challenging the judgment and order passed by the Secretary (Appeals), passed in Revision Application No.1/2004 i.e. with regard to quashing and setting aside N.A. Permission, the petitioners have preferred Special Civil Application No.18868/2005 challenging the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.21/2004 which was with respect to the entry No.1168.

5. Ms. Trusha Patel, learned advocate appearing on behalf of the respective petitioners in both the Special Civil Applications has submitted that the main reason assigned by the Joint Secretary (Appeal), Revenue Department, State of Gujarat in quashing and setting aside the order passed by the TDO, Danta dated 29.7.2003 as well as confirming the order

passed by the Collector, Banaskantha in quashing and setting aside entry Bo.1168, revisional authority is that the revision application is pending before the Gujarat Revenue Tribunal being Revision Application No.35/2002 in which proceedings which were initiated by the Mamlatdar & ALT, under Section 84(C) is under challenge and therefore, “whether it is a new tenure land or an old tenure land”, or “whether the land in question is forfeited to the State Government or not”, is not clear. It is submitted by her that subsequently after disposal of the aforesaid two revision applications by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, the Gujarat Revenue Tribunal has already dismissed the revision application being revision application No. TEN.B.A.35/2002 confirming the order passed by the Dy. Collector/Assistant Collector, Palanpur dated 7.12.99 passed in Tenancy Appeal No.16/96 and therefore, it is submitted that there is no basis to continue the order passed by the Joint Secretary, Revenue Department, State of Gujarat in canceling the order passed by the TDO, Danta dated 29.7.2003 i.e.

canceling N.A.Permission and consequently, the entry No.1168 which was on the basis of the registered sale-deed is required to be restored.

6. This Court passed order on 5.9.2005 directing the State Government to clarify “whether the State Government has challenged the judgment and order passed by the Gujarat Revenue Tribunal dated 29.7,.2005 passed in Revision Application No.35/2002 or not” and in response thereof, affidavit-in-reply is filed on behalf of respondent No.1 sworn in by one D.K.Baria, Under Secretary, Revenue Department, Sachivalaya, Gandhinagar to the effect that the State Government has accepted the judgment and order passed by the Gujarat Revenue Tribunal dated 29.7.2005 passed in Revision Application No,. TEN.B.A.35/2002. In that view of the matter, now when the judgment and order passed by the Gujarat Revenue Tribunal dated 29.7.2005 passed in revision application No.35/2002 by which the Gujarat Revenue Tribunal has dismissed the revision application confirming the order passed by the Assistant Collector, Palanpur dated 7.12.99

passed in Tenancy Appeal No.16/96 by which the Assistant Collector has quashed and set aside the order passed by the Mamlatdar & ALT, Danta dated 30.4.88 passed in Tenancy Case No.3/87 by which land was forfeited to the State Government, has become final, therefore, there is no impediment in the way of the petitioners in getting N.A.Permission. On going through the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 16.7.2005 passed in Revision Application No.1/2004, it appears that the Joint Secretary (Appeals) has set aside the order passed by the TDO, Danta dated 29.7.2003 mainly on the ground that the revision application is pending before the GRT and has granted order of status-quo. In view of the above facts and subsequent judgment and order passed by the Gujarat Revenue Tribunal in dismissing the revision application No.TEN.BA 35/2002 which has now become final, the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat is required to be quashed and set aside in view of the subsequent development and

events.

7. However, it is made clear that this Court has not expressed any opinion on merits with regard to legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 29.7.2005 passed in Revision Application No.TEN.B.A.35 of 2002 as well as the judgment and order passed by the Assistant Collector, Palanpur dated 7.12.1999 passed in Tenancy Appeal No.16 of 1996 and as the affidavit-in-reply is filed on behalf of the State Government to the effect that they have accepted the said judgment, this Court has no other alternative but to allow the present special civil applications.

8. For the reasons stated above, both these petitions succeed. The judgment and order passed by the Joint Secretary, Revenue Department (Appeals), State of Gujarat dated 16.7.2005 passed in Revision Application No.1 of 2004 as well as in Revision Application No.21 of 2004 are hereby quashed and set

aside, so also, the order passed by the Collector, Banaskantha dated 25.11.2004 in quashing and setting aside the Entry No.1168 is also quashed and set aside and consequently, the order passed by the TDO, Danta dated 29.7.2003 granting N.A.Use Permission with respect to the lands in question are hereby restored.

9. Rule is made absolute to the aforesaid extent in each of the petition, however, there will be no order as to costs.

[M.R.SHAH, J.]

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